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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/962,750	11/03/1997	FREDERICK M. AUSUBEL	00786/263003	9250
21559	7590	10/06/2005	EXAMINER	
CLARK & ELBING LLP 101 FEDERAL STREET BOSTON, MA 02110			SWARTZ, RODNEY P	
			ART UNIT	PAPER NUMBER
			1645	
DATE MAILED: 10/06/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

08/962,750

Applicant(s)

AUSUBEL ET AL.

Examiner

Rodney P. Swartz, Ph.D.

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**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on Petition.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24,26 and 28-45 is/are pending in the application.
- 4a) Of the above claim(s) 31-45 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-24,26 and 28-30 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-24,26 and 28-45 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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### **DETAILED ACTION**

1. This action is in response to the Order Remanding to Examiner by the BPAI concerning applicants' submission of a Petition from Refusal to Admit Amendment, received 2 April 2004, requesting entry into the record of their Supplemental Amendment mailed October 16, 2000.

The examiner has considered the "Petition from Refusal to Admit Amendment under 37 C.F.R. §§1.127 and 1.181". After deliberations, the amendment will be entered.

2. Applicants' Supplemental Amendment, received 19 October 2000, is acknowledged. Claims 1, 18, 19, and 22 have been amended.

Claims 1-24, 26, 28-45 are pending. Claims 3-45 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention (office Action, 21 January 1999)

3. Claims 1-24, 26, and 28-30 are under consideration.

### **Rejection Withdrawn**

4. The rejection of claims 1-24, 26, and 28-30 under 35 U.S.C. 103(a) as being unpatentable over Elrod et al (*J. Bacteriol.*, 46:633-645, 1942) or Schroth et al (*Pseudomonas aeruginosa: Ecological Aspects and patient Colonization*, pages 1-29, 1977) in view of Kominos et al (*Appl. Microbiol.*, 24(4):567-570, 1972) and further in view of Geels (*J. Appl. Bacteriol.*, 79:38-42, 1995) and in further in view of Conrad et al (*Rev. Inf. Dis.*, 13, supplement 7:S634-S639, 1991) is withdrawn after reconsideration of applicants' arguments and entry of Supplemental Amendment, 19 October 2000.

### **Conclusion**

5. This application is in condition for allowance except for the following formal matters: disposition of nonelected claims 31-45.

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6. Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

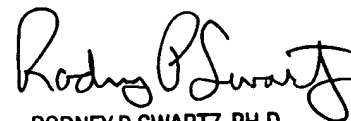
A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney P. Swartz, Ph.D., Art Unit 1645, whose telephone number is (571) 272-0865. The examiner can normally be reached on Monday through Thursday from 5:30 AM to 4:00 PM EST.

If attempts to reach the Examiner by telephone are unsuccessful, the examiner's supervisor, Lynette F. Smith, can be reached on (571)272-0864.

The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



RODNEY P. SWARTZ, PH.D.  
PRIMARY EXAMINER

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September 30, 2005